

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erik Grubin	Team: Team # 4	CCRB Case #: 200307056	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/08/2003 2:50 AM, Wednesday, 09/10/2003	Location of Incident: 42nd Street & 8th Avenue, Manhattan	Precinct: 14	18 Mo. SOL 3/8/2005	EO SOL 3/8/2005	
Date/Time CV Reported Sat, 09/13/2003 2:49 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/13/2003 2:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Nicholls	14740	930834	MTS PCT
2. POM Christop Mcgee	21037	931819	MTS PCT
3. POM Isaias Rivera	31758	931048	MTS PCT
4. POM Thomas Manning	10032	930644	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Isaias Rivera	Discourtesy: PO Isaias Rivera spoke rudely to § 87(2)(b)	
B.POM Isaias Rivera	Abuse: PO Isaias Rivera threatened to arrest § 87(2)(b)	
C.POM Christop Mcgee	Discourtesy: PO Christopher Mcgee spoke rudely to § 87(2)(b)	
D.POM Christop Mcgee	Abuse: PO Christopher Mcgee threatened to arrest § 87(2)(b)	
E.POM Thomas Manning	Discourtesy: PO Thomas Manning spoke rudely to § 87(2)(b)	
F.POM Thomas Manning	Abuse: PO Thomas Manning threatened to arrest § 87(2)(b)	
G.POM James Nicholls	Discourtesy: PO James Nicholls spoke rudely to § 87(2)(b)	
H.POM James Nicholls	Abuse: PO James Nicholls threatened to arrest § 87(2)(b)	

Synopsis

On September 8, 2003, at 2:50 AM at the corner of West 42nd Street and 8th Avenue in Manhattan, PO Isaias Rivera issued complainant/victim § 87(2)(b) a summons for disorderly conduct. While issuing her a summons, PO Rivera, PO Christopher McGee, PO Thomas Manning and PO James Nicholls all of the Mid-town South Precinct, spoke rudely towards § 87(2)(b) by yelling at her and calling her a prostitute (allegations A, C, E and G). The four officers also threatened to arrest the complainant (allegations B, D, F and H). After § 87(2)(b) received a summons, there was no further incident.

On September 18, 2003, § 87(2)(b) opted to resolve this complaint through the mediative process. On October 20, 2003, the NYPD Disciplinary Assessment Unit, deemed the subject officers ineligible for the mediation process.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on September 24, 2003 (See enclosure 5B). On the incident date, § 87(2)(b) was at the corner of West 42nd Street and 8th Avenue waiting for a friend to pick her up. As she waited, a group of unknown males approached and harassed her. § 87(2)(b) was talking on her cellular telephone with her friend, § 87(2)(b) during the incident. According to § 87(2)(b) while still on the telephone, two officers approached the scene and requested that the males disperse. The males complied. She identified the officers as PO Nicholls and PO Rivera, but the uniformed officers were subsequently identified as PO McGee and PO Rivera. PO McGee asked § 87(2)(b) “where she had come from and where she was going.” § 87(2)(b) responded to the officer’s questions and PO McGee then requested her identification. § 87(2)(b) refused to show identification claiming that “she did not do anything wrong and that the officer had no right to ask for it. PO McGee responded by saying, “Look prostitute, I want to see how many warrants you have.” § 87(2)(b) and PO McGee argued about the identification for several minutes and PO McGee stated, “We could give you a summons or we could take you downtown.” § 87(2)(b) responded by saying, “Take me downtown.” The officers then used the radio to call for assistance. Within seconds, two additional uniformed officers approached the scene. She identified the officers as PO McGee and PO Manning. (The two officers were subsequently identified as PO Nicholls and PO Manning). PO Nicholls and PO Manning yelled at her and called her names. § 87(2)(b) could not elaborate on the specifics regarding the name-calling. § 87(2)(b) added that PO Manning called her a “prostitute” and asked her whether she wanted a summons or “to be taken downtown.” At this point, § 87(2)(b) read the shield numbers of the four officers and conveyed the information to § 87(2)(b). PO Manning subsequently told § 87(2)(b) “Get off the damn phone before I unplug it for you.” At this point, § 87(2)(b) retrieved her identification and as she gave it to the officers, she cursed. PO Rivera issued her a summons for disorderly conduct and again § 87(2)(b) cursed. § 87(2)(b) added that during this one-hour incident, she cursed because of frustration but did not curse towards the officers. § 87(2)(b)’s male friend arrived at the location and § 87(2)(b) left the scene without further incident. § 87(2)(b) stated that she sent the summons to criminal court with a plea of not guilty.

Photo Array (See enclosure 11A)

On September 24, 2003, § 87(2)(b) erroneously identified PO Manning (Photo 3) as the officer that issued her a summons and identified PO Rivera (Photo 1), PO Nicholls (Photo 2) and PO Manning (Photo 4) as the officers that “yelled at her.”

Results of Investigation

Witnesses

§ 87(2)(b) refused to provide the name and contact information for the male friend and therefore, his statement could not be obtained. Witness, § 87(2)(b) could not provide the name and contact information for the male friend.

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement on March 1, 2004 (See enclosure 6B). During the incident time, she was on the phone with her friend § 87(2)(b). § 87(2)(b) was waiting for her male friend to pick her up. As § 87(2)(b) waited, she provided the account over the phone to § 87(2)(b). According to § 87(2)(b), a group of males crossed the street and harassed § 87(2)(b). Two to three officers approached the scene and ordered the group of males to leave and the group complied. One officer was rude to § 87(2)(b) and inferred that she was a prostitute saying, "What are you doing hanging around with those males?" § 87(2)(b) then spoke with § 87(2)(b) saying, "Did you hear what he said." § 87(2)(b) read the names and shield numbers of the officers and requested that § 87(2)(b) right them down. As § 87(2)(b) read the names and told § 87(2)(b) the officer told her, "You better hang up or I'll take the phone." A second officer asked § 87(2)(b) for her identification, but § 87(2)(b) refused. She described the officers as talking loud, but not yelling. The second officer told § 87(2)(b) that if she did not provide the officers with identification, she would be "taken downtown." After § 87(2)(b)'s ride arrived, her male friend told her to provide the identification. § 87(2)(b) complied and the officers issued her a summons. § 87(2)(b) was on the telephone with § 87(2)(b) during the entire thirty-minute incident.

Contact with NYC Citywide Summons Office

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Police Officers

On the incident date, PO Rivera, PO McGee, PO Manning and PO Nicholls were all assigned to duty in uniform to the Mid-town South Precinct. The officers were assigned to foot posts within several streets of the incident location. The officers were assigned to Operation Impact and enforced quality of life violations. PO Rivera was identified by his signature on the summonses and the complainant read the nameplates of all four officers. In their CCRB statements, the officers confirmed their presence during the incident.

PO Isaias Rivera

PO Rivera was interviewed at the CCRB on January 14, 2004 (See enclosure 7C). PO Rivera's memo book entry indicates that "at 2:50 AM, one female stopped c/o of 42nd Street and 8th Avenue. Female refused lawful order to move and refused to provide identification. Issued 'C' summons for § 87(2)(b) § 87(2)(b)"

On the incident date at 2:50 AM, PO Rivera observed an illegally parked vehicle in front of Duane Reade pharmacy at the corner of 8th Avenue and 42nd Street in Manhattan. PO Christopher McGee assigned to the adjacent foot post accompanied the officer as the two approached the double-parked vehicle. PO Rivera requested that the male motorist move, but he told the officers that he was waiting to provide a ride for someone. The officers "gave the motorist the benefit of the doubt" and walked away. After waiting several minutes, PO Rivera observed that the vehicle had not moved. The officers approached the vehicle again and ordered the motorist to move the vehicle. The motorist replied that he would, but a female, identified as § 87(2)(b) exited the pharmacy and yelled at the officers for requesting that the motorist move the vehicle. PO Rivera explained to § 87(2)(b) that they ordered the motorist to move the vehicle because the parking space was a no-standing zone. According to PO Rivera, § 87(2)(b) was compliant,

but then she “flipped out” cursing and saying, “You white cops are always picking on minorities.” PO Rivera ordered § 87(2)(b) to “get on her way” several times, but she refused. He asked PO McGee to issue § 87(2)(b) a summons. PO McGee requested her identification on several occasions, but she refused. PO Rivera then requested her identification and she complied. PO Rivera used his radio to conduct warrants checks on § 87(2)(b). PO Rivera added that at some point, after § 87(2)(b) exited the pharmacy, PO McGee told the motorist that he had to move the vehicle because the location was a known prostitution and drug prone area. The two officers did not threaten to arrest § 87(2)(b) and did not yell at her. After the summons was issued, there was no further incident. PO Rivera did not recall whether § 87(2)(b) was on her cellular telephone during the incident and did not recall whether additional officers responded to the scene. He did not observe § 87(2)(b) with a group of males prior to the officer’s stop.

PO Christopher McGee

PO McGee was interviewed at the CCRB on January 14, 2004 (See enclosure 8C). His memo book entry indicates that “at 2:50 AM-one person stopped/female at 42nd Street and 8th Avenue. Subject refused to move direct order of a police officer. Prostitution and drug location. Refused to show identification. Yelling and cursing at us.”

§ 87(2)(g) According to PO McGee, he did not accompany PO Rivera to the vehicle, but approached the scene only after observing § 87(2)(b) yelling and cursing at PO Isaias Rivera. PO McGee described § 87(2)(b) as “using a steady stream of profanity at us.” He did observe a vehicle double-parked in front of § 87(2)(b) with one male driver. PO McGee did not recall whether he spoke with the two civilians during the incident. PO Rivera asked the driver to move the vehicle. He did not recall why § 87(2)(b) was screaming and cursing, but he stated that when PO Rivera explained to the driver that the area is a drug prone and prostitution area, § 87(2)(b) was in close proximity. He added that he did not hear any officer use the term “prostitution” while talking with § 87(2)(b). At some point, PO Rivera wanted to issue § 87(2)(b) a summons for disorderly conduct for her behavior, but § 87(2)(b) refused to provide her identification. § 87(2)(b) eventually provided her identification and PO Rivera issued the summons. During the ten-minute incident, additional officers responded to the scene, but PO McGee did not recall their identities and did not recall their roles during the incident. During the incident, no officer told § 87(2)(b) that she could be arrested and no officer yelled at her. He did not recall whether the female used a cellular telephone during the incident and did not remember whether the officers ordered a group of males to disperse from the area prior to approaching § 87(2)(b).

PO Thomas Manning

PO Manning was interviewed at the CCRB on March 8, 2004 (See enclosure 9C). PO Manning’s memo book entry indicates that “at 2:52 AM, witnessed female arguing with fellow officers at N/W corner of West 42nd Street and 8th Avenue. As I approached woman refused to present identification. The officer explained the reason why she was approached but she refused to present identification. Woman presented identification and PO Rivera issued summons. Woman called us bastards.”

PO Manning observed that PO Rivera and PO McGee had a problem obtaining identification from § 87(2)(b). She refused to provide her identification and he “vaguely” remembered that she cursed at the officers. The officers requested § 87(2)(b)’s identification in order to issue her a summons. PO Manning did not recall why the officers wanted to issue her summons. He did not recall a double-parked vehicle involved in this incident and described the incident as “straight-forward and routine.” During the incident, PO Manning stated that the officers, including himself, told § 87(2)(b) that she could be arrested if she did not provide her identification. During the fifteen-minute incident, PO Manning did not recall whether the officers made a comment regarding prostitution and did not recall whether § 87(2)(b) used a cellular telephone. During the incident, no officer raised their voices or used profanity.

PO James Nicholls

PO Nicholls was interviewed at the CCRB on March 12, 2004 (See enclosure 10C). His memo book entry indicates “Drug prone and prostitution location. Defendant refused to show identification and was yelling and cursing bastards.”

§ 87(2)(g) PO Nicholls stated that he was present with PO Manning as the two responded to the scene. PO Nicholls initially believed that § 87(2)(b) was an emotionally disturbed person. All the officers at various times during times during the incident told § 87(2)(b) that the area was prone to prostitution and drugs, but § 87(2)(b) believed that the officers had called her a drug dealer and prostitute, because she became upset. PO Nicholls could not elaborate. When § 87(2)(b) refused to provide her identification all the officers told her at various times that she could be arrested if she continued to refuse. PO Nicholls did not recall the specifics of the officers’ arrest comments. During the ten to fifteen-minute incident, PO Nicholls did not recall whether § 87(2)(b) used a cellular telephone, and did not recall a double-parked vehicle involved in this incident. The officers used an “authoritative voice” to diffuse the situation. After PO Rivera issued a summons, § 87(2)(b) left the scene without further incident.

Conclusions and Recommendations

ALLEGATION (A) DISCOURTESY: PO ISAIAS RIVERA SPOKE RUDELY TO § 87(2)(b)
(NYC POLICE PATROL GUIDE 203-09)

ALLEGATION (B) ABUSE OF AUTHORITY: PO ISAIAS RIVERA THREATENED TO ARREST § 87(2)(b)
(NYC POLICE PATROL GUIDE 208-01)

ALLEGATION (C) DISCOURTESY: PO CHRISTOPHER McGEE SPOKE RUDELY TO § 87(2)(b)
(NYC POLICE PATROL GUIDE 203-09)

ALLEGATION (D) ABUSE OF AUTHORITY: PO CHRISTOPHER McGEE THREATENED TO ARREST § 87(2)(b)
(NYC POLICE PATROL GUIDE 208-01)

ALLEGATION (E) DISCOURTESY: PO THOMAS MANNING SPOKE RUDELY TO § 87(2)(b)
(NYC POLICE PATROL GUIDE 203-09)

ALLEGATION (F) ABUSE OF AUTHORITY: PO THOMAS MANNING THREATENED TO ARREST § 87(2)(b)
(NYC POLICE PATROL GUIDE 208-01)

ALLEGATION (G) DISCOURTESY; PO JAMES NICHOLLS SPOKE RUDELY TO § 87(2)(b)
(NYC POLICE PATROL GUIDE 203-09)

ALLEGATION (H) ABUSE OF AUTHORITY: PO JAMES NICHOLLS THREATENED TO ARREST § 87(2)(b)
(NYC POLICE PATROL GUIDE 208-01)

PO Rivera issued § 87(2)(b) a summons for § 87(2)(b), an event that is not in dispute. That PO McGee, PO Manning and PO Nicholls were present is also not in dispute § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The processes of investigation and mediation were described to § 87(2)(b) and she was told that neither process would affect the disposition of the summons. § 87(2)(g)

§ 87(2)(g) The officers consistently described that PO Rivera and PO McGee initially responded to the scene and that PO Manning and PO Nicholls responded after the two. The officers as well as the complainant indicated that PO Rivera issued the summons. However, in her CCRB statement § 87(2)(b) identified PO Nicholls as initially responding to the scene with PO Rivera. In her viewing of a photo array, § 87(2)(b) erroneously identified PO McGee as the officer that issued the summons. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) was not present. She only heard parts of the incident through the telephone and readily admitted that § 87(2)(b) provided the account of the entire incident to her. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) PO Rivera stated that PO McGee was present when the two approached the double-parked vehicle, but § 87(2)(b) was not present. However, PO McGee stated that PO Rivera was already at the scene, alone, talking with the complainant. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) § 87(2)(b) claimed that the officers called her a prostitute. Three of the officers acknowledged that the term prostitute was used during the incident when the officers explained to the male motorist and § 87(2)(b) the reason that the two civilians could not remain in the area. § 87(2)(g)

Regarding allegations (B), (D), (F) and (H), the officer statements as well as the complainant's indicate that after learning that PO Rivera would issue her a summons, § 87(2)(b) refused to provide her identification. According to PO Nicholls and PO Manning, the officers explained to § 87(2)(b) that she could be arrested if she did not cooperate and provide her identification for the officers to use to issue a summons. By the complainant's account, the two officers told her, "[We] could give you a summons or we could take you downtown." § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: